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September 18, 2002

NOTICE OF *EX PARTE* PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TW B204
Washington, D.C. 20554

Re: **Verizon Petition for Emergency Declaratory and Other Relief**
WC Docket No. 02-202

Dear Ms. Dortch:

The attached written *Ex Parte* Presentation concerning the above-referenced proceeding was sent to Federal Communications Commission (FCC) Chairman Michael K. Powell on September 17, 2002, by Walter B. McCormick, Jr., President and CEO of the United States Telecom Association. In accordance with FCC Rule 1.1206(b)(1),[1] and the FCC's *Public Notice* released herein on July 31, 2002, this Notice of *Ex Parte* Presentation and a copy of the referenced *Ex Parte* Presentation are being filed with you electronically for inclusion in the public record. Should you have questions, please contact me at (202) 326-7300.

Sincerely,

/s/Lawrence E. Sarjeant
Lawrence E. Sarjeant
Vice President – Law
and General Counsel

attachment

cc: Marsha McBride
Chris Libertelli

[1] 47 C.F.R. § 1.1206(b)(1).

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September 17, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 – 12th Street, SW, Room 8 B201
Washington, D.C. 20554

***EX PARTE* PRESENTATION**

Re: **Verizon Petition for Emergency Declaratory and Other Relief**
WC Docket No. 02-202

Dear Chairman Powell:

On August 9, several CEOs of USTA member companies and I participated in a conference call with you to discuss my July 21, 2002, letter to you concerning steps the Commission should take to minimize the damage to local telecommunications carriers resulting from the WorldCom bankruptcy (attached). During this call, you invited us to provide the Commission with any additional specific suggestions we might have with respect to the Commission's response to bankruptcy concerns.

Subsequent to this call, USTA has been informed that the FCC intends to address a number of the bankruptcy issues raised in my letter, our follow up conference call, and various tariff filings by carriers in the context of Verizon's Petition for Emergency Declaratory and Other Relief, (Docket). USTA has participated in that proceeding by filing comments and reply comments.

If the FCC in fact intends to address these critical issues by taking action on the Petition, USTA strongly encourages it to do so at the earliest possible opportunity. Indeed, our Reply Comments emphasized our concerns regarding the suggestion of some parties that the FCC ought to commence a rulemaking proceeding in order to address the principles presented in the Petition. A rulemaking proceeding would serve only to delay sorely needed action by the FCC. Such delays will only create additional uncertainty within the industry, as well as increase the accrued debts that a supplier-carrier may be unable to recover as a pre-petition debt in any potential bankruptcy proceeding commenced by its carrier customers. The crisis in which the telecommunications industry finds itself demands decisive action by the Commission on these issues.

Furthermore, USTA hopes that the Commission's action on the Petition will include clear guidance to carriers on how they may take prudent measures to protect themselves through their tariffs. A number of large and mid-size carriers and NECA have recently filed tariff amendments intended to clarify, amplify or add more detail concerning actions to be taken should a customer demonstrates itself to be financially distressed and/or at increased risk for nonpayment of its bills. There is nothing extraordinary about such actions, in light of recent experience demonstrating that telecommunications carriers must act prudently and take commercially responsible steps to safeguard themselves from the risk of customers' refusal or inability to pay for services received. Carriers should be afforded the flexibility to modify their existing tariffs to better meet the increased risk of nonpayment that has been brought about by the economic environment in the telecommunications industry. Supplier-carriers should not be forced into holding the bag for those customers that, as a result of their own failings or circumstances beyond their control, cannot pay their bills. It should be noted that what Verizon proposes with respect to tariff revisions is not new or a matter of first impression. Tariff provisions intended to safeguard ILECs from nonpaying customers have existed and have been modified before. The Commission should clearly indicate the types of tariff changes that carriers may reasonably implement in light of the extraordinary circumstances the industry currently faces.

Also, the FCC and its staff must acknowledge that they recognize that time is of the essence in dealing with any individual tariff. Delay by the FCC in acting on pending tariff revisions only serves to increase the financial risk for ILECs that are required to interconnect with other carriers for the exchange of traffic. Unlike suppliers that have the option to provide or not provide goods and services to their customers, ILECs are prohibited from discriminating and must provide service upon request or risk sanctions. Therefore, the FCC has a special responsibility to not place ILECs in the untenable position of having to provide service to non-creditworthy customers without allowing ILECs to impose commercially reasonable conditions upon such customers in order to safeguard ILECs against nonpayment.

In addressing such tariff issues, the FCC must keep in mind that it is ILECs who are obligated as carriers of last resort to serve all customers that desire telecommunications service. Unlike other carriers that can be selective in choosing the markets that they wish to service, ILECs must be ready, willing and able to serve all customers in their service area on demand. Further, ILECs are the most heavily regulated carriers providing telecommunications services. As such, their ability to act is constrained by a level of regulatory review to which no other carriers must submit. These constraints have compelled ILECs to come forward at this time and petition the FCC for expeditious relief so that they may respond to the economic crisis that confronts the telecommunications industry.

USTA again urges the FCC to proactively support in bankruptcy court proceedings in which it participates the right of carriers to receive advance payments or security deposits, in order that they be assured of payment for services they continue to provide bankrupt entities. The FCC should not undermine the ability of carrier-suppliers to obtain the adequate assurances provided for under the U.S. Bankruptcy Code. Rather, in furtherance of the goal of stemming the spread of insolvency throughout the telecommunications industry, the FCC should affirmatively support carrier-suppliers' rights to secure adequate assurance of payment for services provided to a carrier-debtor during a pending bankruptcy, as well as a "cure" of pre-petition indebtedness where such is provided for under the Code. By supporting supplier-carriers in their efforts to secure their rights to adequate assurances and cures under the Code, the FCC will minimize harmful consumer impacts by supporting the efforts of solvent carriers to remain viable and fully capable of providing service to their customers. This point is underscored in "Bad Connection," Scott Woolley, Forbes.com, Aug. 12, 2002 (positing that local carriers may be the next "pillar to crumble" in telecommunications).

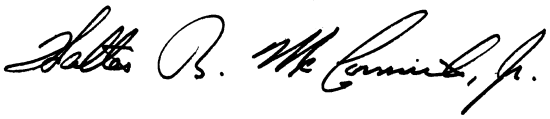
Finally, USTA urges the FCC to reject attempts by some purchasers of bankrupt carriers' assets to circumvent their cure obligations under the Bankruptcy Code by asserting superior rights under the Communications Act to existing service arrangements without curing the debt on the arrangements. The FCC should not countenance such efforts to subvert the Bankruptcy Code. Instead, the FCC should harmonize bankruptcy law and communications law. Section 365 of the Bankruptcy Code is not in conflict with the Communications Act and does not undermine the public policy objectives of the Congress that are embodied in the Communications Act. An appropriate harmonization of Section 365 and the Communications Act allows for an orderly assumption of contacts and arrangements by an acquiring carrier and a cure of the debt owed to the creditor-carrier in association with those contracts and arrangements. Such a harmonization produces a win-win for all customers. It should be assumed that a prudent purchaser would take the cure amount into consideration when negotiating the acquisition price for the debtor's facilities or customers. Therefore, the FCC should not enable an unjustified windfall in favor of acquiring carriers by requiring supplier-carriers to provide uninterrupted service to acquiring carriers absent a cure of the pre-petition debts associated with those facilities or customers.

In sum, USTA appreciates that the FCC has a responsibility to balance the differing interests of the many parties that appear before it. What USTA asks is that the FCC not give short shrift to the interests of supplier-carriers as it intervenes in bankruptcy proceedings and acts upon matter brought before it that are related to, or driven by, carrier bankruptcies. It is a reality of the competitive marketplace that some degree of customer dislocation occurs when a competitor exits the market, either voluntarily or involuntarily. We all share the goal of minimizing customer dislocation when this happens. Nonetheless, minimizing customer dislocation cannot be the sole objective of

the FCC. The FCC must consider the harm to supplier-carriers when they are forced to provide service to a bankrupt carrier without adequate assurance of payment for the

services provided. Consideration must also be given to the needs of supplier-carriers to limit their exposure to unpaid, pre-petition debt by applying commercially reasonable practices that compensate for a customer-carrier's deteriorating financial condition. Finally, entities that acquire debtor-carrier customers or assets in a bankruptcy should be required to cure pre-petition debts to the extent that they desire continuity in the relationship with supplier-carriers.

Sincerely,



Walter B. McCormick, Jr.